

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
31-CA-242619	5/30/2019

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer KINKISHARYO International, LLC		b. Tel. No. (661) 575-1260
		c. Cell No. (661) 998-9661
d. Address (street, city, state ZIP code) 2825 E. Avenue P - Building #704, Palmdale, CA 93551	e. Employer Representative Brett Thomas Corporate HR Sr. Manager	f. Fax No.
		g. e-Mail thomasb@killc.com
		h. Dispute Location (City and State) Palmdale, CA
i. Type of Establishment (factory, nursing home, hotel) Misc. Transportation	j. Principal Product or Service Light Rail Train	k. Number of workers at dispute location 350

1. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1), (3), and (4) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

The above-named employer discriminated against employee (b) (6), (b) (7)(C) by suspending (b) (6), (b) (7)(C) on about (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2019 and by terminating (b) (6), (b) (7)(C) on about (b) (6), (b) (7)(C) 2019 in retaliation for (b) (6), (b) (7)(C) protected concerted activities, union activities and/or because a charge was filed on (b) (6), (b) (7)(C) behalf or (b) (6), (b) (7)(C) cooperated with the Board.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

(b) (6), (b) (7)(C)

4a. Address (street and number, city, state, and ZIP code)

(b) (6), (b) (7)(C)

4b. Tel. No.

(b) (6), (b) (7)(C)

4c. Cell No.

(b) (6), (b) (7)(C)

4d. Fax No.

4e. e-Mail

(b) (6), (b) (7)(C)

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Tel. No.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

By (signature or representative of person making charge)

(b) (6), (b) (7)(C) An Individual

Office, if any, Cell No.

(b) (6), (b) (7)(C)

Print Name and Title

Fax No.

Address:

(b) (6), (b) (7)(C)

Date: 5-30-19

e-Mail

(b) (6), (b) (7)(C)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

(b) (6), (b) (7)(C)



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 31
11500 W OLYMPIC BLVD
SUITE 600
Los Angeles, CA 90064-1753

Agency Website: www.nlrb.gov
Telephone: (310) 235-7351
Fax: (310) 235-7420



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June 4, 2019

(b) (6), (b) (7)(C)

Re: KINKISHARYO International, LLC
Case 31-CA-242619

Dear (b) (6), (b) (7)(C)

The charge that you filed in this case on May 30, 2019 has been docketed as case number 31-CA-242619. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Board Agent Dolores M. Alcantar whose telephone number is (310) 307-7321. If this Board agent is not available, you may contact Supervisory Field Attorney Joanna Silverman whose telephone number is (310) 307-7309.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all

steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "Mori Rubin". The signature is written in a cursive, flowing style.

Mori Rubin
Regional Director



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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Download
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June 4, 2019

Brett Thomas, Corporate HR Sr. Manager
2825 E. Avenue P - Building #704
Palmdale, CA 93551

Re: KINKISHARYO International, LLC
Case 31-CA-242619

Dear Mr. Thomas:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Board Agent Dolores M. Alcantar whose telephone number is (310) 307-7321. If this Board agent is not available, you may contact Supervisory Field Attorney Joanna Silverman whose telephone number is (310) 307-7309.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not

enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

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We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "Mori Rubin". The signature is written in a cursive, flowing style.

Mori Rubin
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

cc: Philip Shecter, Attorney
McDermott Will & Emery LLP
415 Mission Street
Suite 5600
San Francisco, CA 94105-2533

Ronald J. Holland
McDermott Will & Emery LLP
415 Mission Street
Suite 5600
San Francisco, CA 94105



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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July 29, 2019

Philip Shecter, Attorney
McDermott Will & Emery LLP
415 Mission Street, Suite 5600
San Francisco, CA 94105-2533

Ronald J. Holland
McDermott Will & Emery LLP
415 Mission Street, Suite 5600
San Francisco, CA 94105

Re: KINKISHARYO International, LLC
Case 31-CA-242619

Dear Mr. Shecter and Mr. Holland:

This is to advise that I have approved the withdrawal of the portion of the charge alleging that the Employer violated Section 8(a)(4) of the Act.

The remaining allegations that the Employer violated Section 8(a)(3) and (1) of the Act by suspending and discharging an employee remain subject to further processing.

Very truly yours,

A handwritten signature in black ink that reads "Mori Rubin".

Mori Rubin
Regional Director

cc:

(b) (6), (b) (7)(C)

Brett Thomas, Corporate HR Sr. Manager
2825 E. Avenue P - Building #704
Palmdale, CA 93551



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Fax: (310)235-7420

August 19, 2019

(b) (6), (b) (7)(C)

Re: KINKISHARYO International, LLC
Case 31-CA-242619

Dear (b) (6), (b) (7)(C):

We have carefully investigated and considered your charge that KINKISHARYO International, LLC ("the Employer") has violated the National Labor Relations Act ("the Act").

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

Your charge alleges that the Employer violated Section 8(a)(1) and (3) of the Act by disciplining you on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) 2019, and discharging you on (b) (6), (b) (7)(C) 2019, because you engaged in protected concerted activity and union activity. The investigation revealed that the Employer would have taken the same action against you even in the absence of your protected concerted activities and/or union activities. Accordingly, there is insufficient evidence to establish a violation of the Act as alleged.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlr.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlr.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **September 3, 2019**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than September 2, 2019. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before September 3, 2019**. The request may be filed electronically through the *E-File Documents* link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after September 3, 2019, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



MORI RUBIN
Regional Director

Enclosure

cc: Brett Thomas, Corporate HR Sr. Manager
2825 E. Avenue P - Building #704
Palmdale, CA 93551

Philip Shecter, Attorney
McDermott Will & Emery LLP
415 Mission Street, Suite 5600
San Francisco, CA 94105-2533

Ronald J. Holland
McDermott Will & Emery LLP
415 Mission Street
Suite 5600
San Francisco, CA 94105



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

September 6, 2019

(b) (6), (b) (7)(C)

Re: Kinkisharyo International, LLC
Case 31-CA-242619

Dear (b) (6), (b) (7)(C)

We have received your appeal and accompanying material. We will assign it for processing in accordance with Agency procedures, which include review of the investigatory file and your appeal in light of current Board law. We will notify you and all other involved parties as soon as possible of our decision.

Sincerely,

Peter Barr Robb
General Counsel

By:

Mark E. Arbesfeld, Director
Office of Appeals

cc: MORI RUBIN, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
11500 W OLYMPIC BLVD STE 600
LOS ANGELES, CA 90064-1753

PHILIP SHECTER, ESQ.
MCDERMOTT WILL & EMERY LLP
415 MISSION ST STE 5600
SAN FRANCISCO, CA 94105-2533

BRETT THOMAS
CORPORATE HR SR. MANAGER
KINKISHARYO INTERNATIONAL,
LLC
2825 E AVE P BLDG #704
PALMDALE, CA 93551

RONALD J. HOLLAND
MCDERMOTT WILL & EMERY LLP
415 MISSION ST STE 5600
SAN FRANCISCO, CA 94105

kh



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

September 30, 2019

(b) (6), (b) (7)(C)

Re: KINKISHARYO International, LLC
Case 31-CA-242619

Dear (b) (6), (b) (7)(C)

We have carefully considered your appeal from the Regional Director's decision to dismiss the captioned charge. Based upon our review of the evidence disclosed by the Regional Office's investigation as well as applicable case law, we have decided to deny the appeal, substantially for the reasons explained in the Regional Director's letter dated August 19, 2019.

The Regional Office's investigation disclosed insufficient evidence to establish that the Employer disciplined, suspended, or discharged you in retaliation for your union and/or protected concerted activities, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act (Act). In order to determine whether an employer's adverse action against an employee was discriminatorily motivated, the General Counsel must demonstrate by a preponderance of the evidence that the employee's protected activity was a motivating factor for the adverse decision. Only after such a showing does the inquiry turn to whether the employer would have taken the same action in the absence of the protected conduct. *See Wright Line*, 251 NLRB 1083 (1980), *enforced*, 662 F.2d 899 (1st Cir. 1981), *cert. denied*, 455 U.S. 989 (1982). Here, the evidence indicates that the Employer based its employment actions on legitimate business considerations. There is insufficient evidence to establish that your alleged protected activity motivated the Employer to take adverse actions against you. Moreover, the evidence indicated that the Employer would have taken the same employment actions regardless of your union and/or protected concerted activities. In these circumstances, we cannot conclude the Employer violated the Act, as alleged.

On appeal you contend that the Employer also discriminated against you because of your (b) (6), (b) (7)(C) case. This Agency can only enforce the National Labor Relations Act. We lack the authority to enforce other Federal, State, or Local laws. Concerning the allegation regarding the filing of Board charges, you withdrew this allegation. Thus, this allegation is no longer encompassed in the above charge nor considered in connection with the instant appeal.

Accordingly, we deny the appeal, and this case is closed.

Sincerely,

Peter Barr Robb
General Counsel



By: _____

Mark E. Arbesfeld, Director
Office of Appeals

cc: MORI RUBIN, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
11500 W OLYMPIC BLVD STE 600
LOS ANGELES, CA 90064-1753

PHILIP SHECTER, ESQ.
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BRETT THOMAS
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kh